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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.3555	)	RM-_____
of the Commission's Rules to	)	MM Docket No. 97-_____
Eliminate Restrictions on	)	
Newspaper/Broadcast Station	)	
Cross-Ownership	)	

To: The Commission

PETITION FOR RULEMAKING

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SUMMARY

The Newspaper Association of America ("NAA") hereby petitions the Commission to initiate a rulemaking proceeding to eliminate the restrictions on common ownership of radio and television broadcast stations and co-located daily newspapers now embodied in Section 73.3555(d) of the FCC's Rules. If they were ever needed, these restrictions clearly are an anachronism in the modern highly diversified and technologically advanced media marketplace. Today, both newspaper publishers and broadcast station owners face intense competition from a rapidly expanding array of information providers, almost all of which are free to operate on a "multi-channel" or "multiple outlet" basis without significant governmental constraints on common ownership. In this abundantly diverse and highly competitive mass media marketplace, the maintenance of these selective cross-ownership limitations is unnecessary, discriminatory, and unjustifiable.

Historically, the FCC encouraged the participation of newspaper publishers in the broadcast industry. In 1975, however, the FCC reversed course and adopted regulations prohibiting the joint ownership of a broadcast station and a daily newspaper in the same community. The record before the FCC contained no concrete evidence to show that the ban on co-located newspaper/broadcast combinations would in fact promote diversity or otherwise serve the public interest.

The "hoped for" gain in diversity that was the only premise for adoption of the ban in 1975 has been achieved, NAA submits, not through governmental intervention, but through technological developments and the explosive growth of competition in the information marketplace. For example, since 1975, both television and radio broadcasting have enjoyed

continued growth and ever-increasing diversity. There are now over 12,000 licensed radio stations in the United States, and more than 1,500 licensed television stations. The healthy growth in broadcasting, moreover, has been complemented by remarkable gains in penetration and in subscribership by the cable television industry. Today, cable is available to 97 percent of all U.S. households, and two-thirds of all TV households subscribe. The maturation of the cable television industry, together with technological innovations such as direct broadcast satellite ("DBS") service, now ensure the availability of a multitude of independent and diverse media voices to American consumers. The entry of telephone companies into video programming and distribution services in their local service areas will further speed the growth of new voices in the media marketplace.

Other new technological innovations also have ushered in a host of competitive new media (e.g., wireless cable, open video systems, and on-line computer services) which are constantly expanding the available sources of information, news, and entertainment. These new media also compete with newspaper publishers and broadcasters for advertising revenues. In addition, direct mail advertising has grown at an exponential rate in recent years, and now accounts for nearly three times the amount spent on radio ads. Increasingly popular city, regional, and specialty magazines have eroded newspapers' share of print advertising revenues while providing additional sources of information and opinion.

The regulatory environment, too, is dramatically different from that in which the newspaper cross-ownership restrictions were introduced more than two decades ago. While in 1975 media owners generally were limited to controlling a single outlet in a community, today multiple ownership of same-service outlets is routinely allowed. For example, radio

station owners can now hold licenses for up to eight radio stations in the same market. Newspapers and broadcast station owners, however, continue to face an absolute governmental barrier to common ownership.

Moreover, concerns about diversity cannot justify this absolute ban. In the current media environment, cross-owners have every incentive to differentiate their newspaper and broadcast "products" in order to appeal to a larger total audience. Thus, as the FCC itself has recognized, common ownership of media outlets may actually "enhance the quality of viewpoint diversity." Moreover, in some circumstances, excluding TV and radio station owners from the local newspaper business has undercut the diversity goal, by preventing local broadcasters from acquiring struggling dailies in their home communities.

Given the explosion in the number and variety of competing media outlets, and considering the courts' recent heightened scrutiny of restrictions affecting First Amendment rights, the perpetuation of the newspaper/broadcast cross-ownership ban has serious constitutional implications. Although the rule was sustained against a First Amendment challenge in the 1970s, the information marketplace in which newspapers and broadcast stations compete has changed dramatically since the Supreme Court's decision. In fact, the FCC repeatedly has recognized the change in the level of competition in the mass media field in its decisions eliminating or relaxing many of its other ownership rules and other similar "structural" limitations on the broadcast industry.

Similarly, the courts have made clear that the Commission has an affirmative obligation to review its policies, particularly those that are based on "predictive judgments," in light of developments in the marketplace and changes in the regulatory environment.

Recent judicial actions (such as those striking down the cable/telco ban and the ban on alcohol price advertising) strongly suggest that the courts now would require a far stronger showing than was made in 1975 to support such a direct limitation on the First Amendment rights of a particular class of citizens, and that the newspaper cross-ownership ban could not withstand constitutional scrutiny today.

Although the Commission has undertaken a limited review of its waiver policies with respect to newspaper/radio combinations, it has not yet extended its inquiry to newspaper/television waivers. Nor has it initiated a broader reevaluation of the need for the rule itself. On the contrary, the Commission has continued to apply the rule inflexibly in individual application proceedings. NAA submits that prompt initiation of a broader proceeding to repeal these restrictions would help preserve broadcast stations and newspapers as viable voices and spur their evolution into more diversified and innovative competitors in today's technologically advanced multimedia marketplace. Accordingly, NAA respectfully requests that the Commission move forward without further delay to issue a notice of proposed rulemaking to repeal Section 73.3555(d).

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To: The Commission

PETITION FOR RULEMAKING

The Newspaper Association of America ("NAA"), pursuant to Section 1.401 of the Commission's Rules, hereby petitions the Commission to initiate a rulemaking proceeding to eliminate the restrictions on common ownership of radio and television broadcast stations and co-located daily newspapers now embodied in Section 73.3555(d) of the Rules.[1]

I. INTRODUCTION

The newspaper/broadcast ownership limitations, which were adopted in 1975 despite the absence of any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest, are an

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[1] The full text of Section 73.3555(d), 47 C.F.R. § 73.3555(d), is set forth in Attachment A hereto. In addition to amending Section 73.3555 to eliminate subsection (d), the Commission should amend Notes 2, 4 and 5 to eliminate all references to daily newspaper(s), delete Note 6, and renumber the remaining provisions of Section 73.3555 and the accompanying Notes as appropriate.

anachronism in the current highly diversified and technologically advanced media marketplace. Today, both newspaper publishers and broadcast station licensees face intense and ever-increasing competition from a rapidly expanding array of information providers. Virtually all of these alternative providers are free to operate on a "multi-channel" or "multiple outlet" basis without governmental constraints on common ownership. In this abundantly diverse and highly competitive mass media marketplace, maintenance of these selective cross-ownership restrictions is unnecessary, discriminatory, and unjustifiable. In 1975, media owners generally were limited to controlling a single outlet in a community. Today, however, multiple ownership of same-service outlets as well as competing media facilities is routinely allowed. Indeed, newspaper publishers and broadcast station owners are virtually alone among major information providers in facing an absolute governmental barrier to common ownership.

In the current media environment, moreover, cross-owners have every incentive to differentiate their newspaper and broadcast "products" in order to appeal to a larger total audience. Thus, as the FCC itself has recognized, common ownership of media outlets can serve to "enhance the quality of viewpoint diversity." Further, in some circumstances, excluding TV and radio station owners from the local newspaper business has directly undercut the diversity goal. Between 1988 and 1993, more than 100 daily newspapers failed throughout the United States. At least some of those papers might well have survived had local broadcasters been eligible to acquire struggling dailies in their home communities.

Perpetuation of the newspaper/broadcast cross-ownership ban clearly has serious constitutional implications as well. Although the rule was sustained against a First Amendment challenge in the 1970s, the information marketplace in which newspapers and broadcast stations compete has changed dramatically since the Supreme Court's decision. In fact, the FCC repeatedly has recognized the change in the level of competition in the mass media field in its decisions eliminating or relaxing many of its other ownership rules and similar "structural" limitations on the broadcast industry. Similarly, the courts have made clear that the Commission has an affirmative obligation to review its policies -- particularly those based, as here, on "predictive judgments" -- in light of changes in the marketplace and the regulatory environment. NAA submits that the reviewing courts now would require a far stronger showing than was made in 1975 to support such a direct and substantial limitation on the First Amendment rights of a particular class of citizens, and that the newspaper/broadcast cross-ownership restrictions could not withstand constitutional scrutiny today.

In short, as detailed below, the newspaper/broadcast cross-ownership rule adopted by the FCC in 1975 was based not on hard evidence, but rather on a mere "hoped for" gain in diversity. Now, more than twenty years later, it cannot be said that the rule has served its intended goal. On the contrary, broadcast stations and newspapers today are unnecessarily handicapped by the outdated newspaper/broadcast cross-ownership rule. Although the Commission has undertaken a limited review of its waiver policies with respect to newspaper/radio combinations, it has not yet initiated a broader reevaluation of the need for the rule itself, and continues to apply it inflexibly

in individual application proceedings. Commencement and prompt completion of a proceeding to repeal these restrictions not only would help preserve broadcast stations and newspapers as viable voices, but also would serve to spur their evolution into more diversified and innovative competitors in today's technologically advanced multimedia marketplace. Accordingly, NAA respectfully submits that the Commission should move forward without further delay to initiate rulemaking proceedings to eliminate the newspaper/broadcast cross-ownership prohibition.

II. IDENTITY AND INTEREST OF THE PETITIONER

The NAA is a nonprofit organization representing the newspaper industry and over 1,500 newspapers in the United States and Canada. Most NAA members are daily newspapers; these members account for approximately 85 percent of U.S. daily circulation. NAA's membership also includes many nondaily U.S. newspapers and other newspapers published elsewhere in the western hemisphere as well as in Europe and the Pacific Rim.[2] Many of the NAA's members also hold licenses for broadcast stations, some in the home markets of their newspapers -- originally issued prior to the adoption of the newspaper/broadcast cross-ownership prohibition in 1975 and therefore

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[2] NAA was formed June 1, 1992 by the merger of the American Newspaper Publishers Association, the Newspaper Advertising Bureau, and five other marketing associations: the Association of Newspaper Classified Advertising Managers, International Circulation Managers Association, International Newspaper Advertising and Marketing Executives, Newspaper Advertising Co-op Network, and the Newspaper Research Council.

"grandfathered" when the prospective ban was implemented -- and some in other markets across the United States.[3]

The NAA serves the newspaper industry and its individual members in efforts to communicate and advocate the views and interests of newspapers to all levels of government and to advance the interests of newspapers in First Amendment issues. In this capacity, NAA has participated in numerous Commission proceedings. NAA recently submitted Comments (filed February 7, 1997) and Reply Comments (filed March 21, 1997) in response to the Commission's Notice of Inquiry,[4] which was initiated to explore possible revisions to the FCC's existing policies concerning waiver of the newspaper/radio cross-ownership restrictions. NAA urged the Commission to move forward quickly to initiate rulemaking proceedings looking toward repeal of the newspaper/broadcast cross-ownership prohibition in its entirety. In the interim, NAA asked the FCC to adopt a broad and flexible new waiver policy for newspaper/radio cross-ownership as a minimum step toward elimination of these anachronistic restrictions.

In addition, NAA filed Comments (also on February 7, 1997) in the Commission's ongoing proceedings relating to television ownership (MM Docket Nos. 91-221 et al.), again urging the Commission promptly to take the steps necessary to

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[3] See Broadcasting & Cable Yearbook 1996 at A-125 - A-132.

[4] Newspaper Radio/Cross Ownership Waiver Policy, 11 FCC Rcd 13003 (1996) ("Notice of Inquiry" or "Newspaper/Radio NOI").

repeal the newspaper/broadcast cross-ownership limitations.[5] The American Newspaper Publishers Association ("ANPA"), one of NAA's predecessor organizations, similarly participated in numerous Commission proceedings affecting the interests of the newspaper industry, including the proceedings which led to the adoption of the newspaper/broadcast cross-ownership restrictions in 1975.[6]

III. THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RESTRICTIONS WERE ADOPTED OVER TWO DECADES AGO BASED ONLY UPON SPECULATIVE ASSUMPTIONS ABOUT DIVERSITY, AND WITHOUT ANY RECORD EVIDENCE OF ANTI-COMPETITIVE CONDUCT BY CROSS-OWNERS.

Historically, the Commission encouraged the participation of newspaper publishers in the broadcasting industry. Thus, newspapers pioneered first AM service and, subsequently, FM and television service in many communities.[7] Indeed, even in its 1975 decision adopting the newspaper/broadcast cross-ownership rule, the Commission observed that many such newspaper-owned stations "began operation long

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[5] NAA's Comments and Reply Comments in response to the Newspaper/Radio NOI and its Comments in the television ownership proceedings are hereby incorporated by reference.

[6] See Second Report and Order in Docket No. 18110 (Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations), 50 FCC2d 1046 (1975) ("Second Report and Order"), recon., 53 FCC2d 589 (1975), rev'd in part, Nat'l Citizens Comm. for Broadcasting v. FCC, 555 F.2d 938 (D.C. Cir. 1977), reinstated, Federal Communications Comm'n v. Nat'l Citizens Comm. for Broadcasting, 436 U.S. 775 (1978) ("FCC v. NCCB").

[7] See Second Report and Order, 50 FCC2d at 1074, 1078.

before there was hope of profit and were it not for their efforts service would have been much delayed in many areas."[8]

Further, the FCC recognized that existing newspaper/broadcast cross-owners as a group had established "[t]raditions of service" from the outset, which had been continued.[9] Thus, before 1975, the Commission repeatedly determined, both in initial licensing actions and in granting countless license renewal applications, that the public interest would be served by common ownership and operation of broadcast facilities and co-located daily newspapers. Moreover, in the 22 years since the prospective ban was adopted, the agency has reaffirmed that finding many times in renewing the licenses of stations that are part of "grandfathered" combinations.

When the FCC adopted its Second Report and Order in 1975, it asserted, for the first time, the authority to adopt general rules restricting the right of newspaper publishers to operate broadcast stations in the communities in which their newspapers are published. Despite determining that "there is no basis in fact or law for finding newspaper owners unqualified as a group for future broadcast ownership,"[10] the agency adopted regulations prohibiting the future grant of a broadcast station license to any party who "directly or indirectly owns, operates or controls" a daily newspaper published in the same community.[11]

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[8] Id. at 1078.

[9] Id.

[10] Id. at 1075.

[11] See 47 C.F.R. § 73.3555(d) (1996) (formerly 47 C.F.R. §§ 73.35(a), 73.240(a)(1), and 73.636(a)(i)).

In the Commission's view, the expansion of its role, from regulation solely of "communication by wire and radio"[12] to the promulgation of rules on newspaper/broadcast cross-ownership, was justified on the basis of promoting diversity.[13] In reviewing the evidence before it on cross-ownership in 1975, however, the FCC made a number of empirical findings, including that, in general, there was significant diversity or "separate operation" between commonly owned broadcast stations and newspapers;[14] and that newspaper-affiliated broadcast stations tended to be superior licensees in terms of locally-oriented service.[15]

The Commission decided, nonetheless, to prohibit any daily newspaper publisher from acquiring a new license for a broadcast station in its community or transferring an existing combination to new ownership. The sole basis cited for the prospective ban was the FCC's statement that "[w]e think that any new licensing should be expected to add to local diversity."[16] As to license renewals of existing combinations, however, the agency found that, in the majority of cases, a combination

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[12] 47 U.S.C. § 151 (1994).

[13] See Second Report and Order, 50 FCC2d at 1050, 1079.

[14] Id. at 1089.

[15] Id. at 1078-81. The FCC's own study, based on 1973 TV Station Annual Programming Reports, found that, on average, co-located newspaper-owned television stations programmed six percent more local news, nine percent more local non-entertainment programming, and twelve percent more total local programming than did other TV stations. See id. at 1094-98 (Appendix C). The Commission summarized these findings as showing "an undramatic but nonetheless statistically significant superiority in newspaper owned television stations in a number of program particulars." Id. at 1078 n.26.

[16] Id. at 1075.

of factors, including "a long record of service to the public," possible "disruption for the industry," and "hardship for individual owners" outweighed a "mere hoped for gain in diversity."[17]

In reviewing the FCC's order, the United States Court of Appeals noted that "[t]he Commission enacted these rules without compiling a substantial record of tangible harm."[18] On the contrary, according to the Court, the record contained "little reliable 'hard' information."[19] The Court of Appeals expressly noted the absence of evidence in the record of specific anti-competitive acts by cross-owned stations.[20] Similarly, although it ultimately affirmed the prospective prohibition adopted by the FCC, the United States Supreme Court recognized that "the Commission did not find that existing co-located newspaper-broadcast combinations had not served the public interest, or that such combinations necessarily 'spea[k] with one voice' or are harmful to competition."[21]

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[17] Id. at 1078. In sixteen so-called "egregious" cases, in communities in which there was only one newspaper and one television or radio station, however, the FCC ordered divestiture within five years. See id. at 1081-84.

[18] Nat'l Citizens Comm. for Broadcasting v. FCC, 555 F.2d 938, 944 (D.C. Cir. 1977), aff'd in part and rev'd in part, 436 U.S. 775 (1978).

[19] Id. at 956.

[20] See id. at 959.

[21] FCC v. NCCB, 436 U.S. 775, 786.

IV. THE COMMISSION HAS CONTINUED TO APPLY THE 1975 RULE RIGIDLY, NOTWITHSTANDING AGENCY AND CONGRESSIONAL RECOGNITION THAT A REEXAMINATION OF THE RESTRICTION IS APPROPRIATE.

When the newspaper/broadcast cross-ownership restrictions were adopted in 1975, a total of 8,737 commercial radio and television stations were on the air.[22] At that time, there were an estimated 94 co-located newspaper/television combinations in the United States. According to a study commissioned by the ANPA, there were an additional 380 newspaper/radio cross-ownerships.[23] As noted above, all but sixteen of those combinations were grandfathered by the Commission. For the past two decades, however, their owners have been precluded from acquiring additional stations in the same markets and from selling their grandfathered combinations intact, to a single buyer. Moreover, daily newspaper publishers in other communities have been excluded from station ownership in their home markets altogether, and local broadcasters have been barred from acquiring or establishing new daily newspapers in their communities of license.

Indeed, since it adopted the newspaper/broadcast cross-ownership rules, the Commission has granted only two permanent newspaper/broadcast waivers -- in each case, on the basis of "special circumstances" identified by the parties. Thus, in Field Communications Corp., 65 FCC 2d 959 (1977), the FCC granted a waiver to allow the publisher of two daily newspapers in Chicago to reacquire control of a Chicago

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[22] See Broadcasting & Cable Yearbook 1996, at B-671, C-244 (data as of January 1, 1975).

[23] See Second Report and Order, 50 FCC2d at 1061.

television station in which it had sold its previous majority interest. The Commission found that the rule was intended to apply to new entrants in the market and that the publisher's reacquisition of the station would not create a "new ownership pattern" in Chicago; the publisher had built and operated the station, and had continued to play a significant role in its operation as a minority owner after assigning the majority interest.[24] The Commission also noted that the station had only recently become financially viable, and that the sale was not initiated by the publisher but occurred as a result of the "complete liquidation" of the assignor.[25]

The only other permanent waiver of the rule involved the reacquisition of the New York Post by a subsidiary of Rupert Murdoch's The News Corporation Limited, which is under common control with Fox Television Stations, Inc., licensee of WNYW (TV), New York.[26] The agency found that there was a substantial risk to the continued viability of the newspaper without a waiver, and that Murdoch's reacquisition of the Post might be pivotal to the newspaper's survival. The Commission also noted that, by removing uncertainty caused by the cross-ownership rule in the then-pending bankruptcy proceeding involving the newspaper's former owner, grant of the waiver would "accommodate the policies underlying the federal bankruptcy laws . . . ."[27] The FCC further found that denial of the waiver would threaten the existence of an

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[24] 65 FCC 2d at 961.

[25] Id.

[26] Fox Television Stations, Inc., 8 FCC Rcd. 5341 (1993), aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC, 46 F. 3d 1154 (D.C. Cir. 1995).

[27] Id. at 5350.

established media outlet, and that neither the "cost to diversity" of common ownership of the New York Post and WNYW nor the small augmentation of Murdoch's share of the New York advertising market jeopardized Commission policy objectives.

More recently, in Capital Cities/ABC, Inc.,[28] the Commission denied the request of The Walt Disney Company ("Disney") for permanent waivers of the newspaper/radio cross-ownership rule for combinations in Dallas-Fort Worth and Pontiac Detroit resulting from Disney's acquisition of control of Capital Cities/ABC, Inc. The FCC declined to grant the requested waivers because it found that Disney's arguments ran chiefly to the merits of the rule itself, and did not satisfy the established narrow waiver standards.[29] The Commission stated:

> We recognize that a full review of these policies is warranted, but believe that this restricted transfer proceeding is the wrong forum to conduct such a review. We intend, instead, to commence an appropriate proceeding to obtain a fully informed record in this area and to complete that proceeding expeditiously.[30]

As noted above, the Commission subsequently issued its Newspaper/Radio NOI, calling for comment on the limited issue of whether and how to amend the existing waiver policies for newspaper/radio cross-ownership.

In its most recent decision involving the cross-ownership restriction, the FCC denied the request of Tribune Company ("Tribune"), which publishes the Fort Lauderdale, Florida *Sun-Sentinel*, for a permanent waiver to permit the acquisition of

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[28] Capital Cities/ABC, Inc., 11 FCC Rcd 5841 (1996) ("Disney")

[29] Id. at 5888, 5895.

[30] Id. at 5888 (footnote omitted).

WDZL(TV), a UHF station licensed to Miami.[31] In doing so, the agency rejected a detailed showing by Tribune of the level of media diversity and competition in the Miami/Ft. Lauderdale market as well as Tribune's specific proposals to augment the news and informational programming of the television station involved. The Commission found that "Tribune's analysis of . . . the South Florida media market does not appear to present exceptional circumstances."[32] Similarly, the FCC observed that "certain of the benefits identified by Tribune, such as enhanced news gathering and public service campaigns, appear to be of the type that would exist in virtually all newspaper/broadcast combinations and, consequently, cannot be regarded as demonstrating exceptional circumstances."[33] Accordingly, the Commission concluded that "Tribune has not met its heavy burden of justifying a permanent waiver of the newspaper/television cross-ownership rule."[34]

As it had in the Disney decision, the Commission stated its belief that "many of Tribune's arguments challenging the general economic and constitutional merits of the newspaper cross-ownership rule have broad applicability, and suggest changes in the Commission's basic newspaper/television cross-ownership waiver policies, or amendment to the underlying rule itself."[35] The FCC declined to address those

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[31] Stockholders of Renaissance Communications Corp., FCC 97-98, (March 21, 1997) ("Tribune/Renaissance").

[32] Tribune/Renaissance ¶ 48.

[33] Id. ¶ 49.

[34] Id.

[35] Id. ¶ 50.

arguments, however, in the context of a restricted adjudicatory proceeding "in which third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record."[36] Again citing the Disney decision, the agency went on to state that "we believe that an open proceeding, rather than a restricted adjudication, is the best forum to address such issues."[37] Moreover, the Commission observed that "[a] decision to proceed with any modification of the newspaper cross-ownership rule, or our waiver policies thereunder, by means of an open proceeding is well within the Commission's discretion."[38]

The Commission concluded that, under its established waiver policies, Tribune's request for a permanent waiver must be denied. The agency also rejected Tribune's alternative request that it delay the effective date of the denial of the permanent waiver until after the Commission completes a rulemaking proceeding concerning the newspaper/cross-ownership rule.[39] Instead, Tribune was granted a temporary waiver of 12 months duration in which to divest the *Sun-Sentinel* or WDZL. In concurring statements, however, both Commissioners Quello and Chong made clear that they "would have preferred to initiate a rulemaking and grant a temporary waiver pending

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[36] Id., citing Capital Cities/ABC, Inc., 11 FCC Rcd at 5888.

[37] Id., citing Capital Cities/ABC, Inc., 11 FCC Rcd at 5891.

[38] Tribune/Renaissance ¶ 50.

[39] Id. ¶¶ 56-57.

the outcome of that rulemaking."[40] NAA agrees with Commissioner Chong that "[t]he Commission should be reexamining this rule to determine whether it makes sense in our current competitive media environment."[41] Commissioner Quello, too, is correct in observing that the restriction "is out-dated, over-regulatory, and all too often flies in the face of common sense."[42]

In short, the Commission has acknowledged in both the Disney decision and in Tribune/Renaissance that a rulemaking proceeding is the appropriate vehicle for review of the newspaper cross-ownership restrictions. Yet to date it has undertaken only a limited proceeding to reexamine established waiver policies with respect to newspaper/radio combinations only. As NAA demonstrated in its March 21, 1997 Reply Comments in response to the Newspaper/Radio NOI, the record developed in that proceeding plainly justifies the initiation of a broader rulemaking looking toward outright repeal of the newspaper/broadcast restrictions -- as applied with respect to television as well as radio stations.

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[40] Id. (concurring statement of Commissioner Chong).

[41] Id.; see also id. (concurring statement of Commissioner Quello) ("this Commission needs to initiate a rulemaking concerning the crossownership rule for newspaper and television owners"). Similarly, in his separate statement in Disney, Chairman Hundt observed: "[o]ur current strict prohibition on newspaper-broadcast cross-ownership, which also may be unnecessarily denying broadcasters revenue they could put to good use, needs review and probably needs significant revision. The Commission today quite rightly commits to conduct, and to complete expeditiously, an open proceeding to modify its newspaper-broadcast cross-ownership policies as necessary." Disney, 11 FCC Rcd at 5906 (separate statement of Chairman Hundt).

[42] Tribune/Renaissance (concurring statement of Commissioner Quello).

NAA submits that Commission action to remove these constraints on publishers and station owners is long overdue.[43] In the abundantly diverse and highly competitive mass media marketplace of the late 1990s, maintenance of these selective cross-ownership restrictions is unnecessary, discriminatory, and unjustifiable. The "hoped for gain in diversity" that was the sole premise for adoption of the newspaper/broadcast cross-ownership prohibition in 1975 has been achieved, not through governmental action, but through the technological revolution of the past two decades and the explosive growth in competition in the mass media marketplace. Accordingly, the Commission should initiate a rulemaking proceeding to remove itself from its unnecessary and counterproductive involvement in this area.

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[43] NAA recognizes that, in the past, the Commission was constrained from reexamining the newspaper/broadcast cross-ownership restrictions by riders to the FCC's appropriations legislation. As the Commission is well aware, however, that restriction is no longer contained in the agency's appropriations legislation. See Newspaper/Radio NOI, 11 FCC Rcd. at 13006-07, n.20. Moreover, in the Telecommunications Act of 1996, Congress directed the Commission to review all of the media ownership regulations biennially to determine whether they remain necessary. Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h) 110 Stat. 111-12 (1996) (In this biennial review, the Commission "shall repeal or modify any regulation it determines to be no longer in the public interest.") Thus, the FCC unquestionably has the authority to initiate a rulemaking proceeding to reexamine the newspaper/broadcast cross-ownership rules. Moreover, as discussed in greater detail in Section VI, infra, the agency has an affirmative obligation to do so.